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Attorneys for Plaintiffs
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GABANA DISTRIBUTION, LTD.

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A Professional Corporation

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ROOTS READY MADE GARMENTS
CO. W.L.L.,

Plaintiff,

v.

THE GAP, INC., a/k/a, GAP, INC., GAP
INTERNATIONAL SALES, INC.,
BANANA REPUBLIC, LLC, and OLD
NAVY, LLC,

Defendant.

Case No. C 07 3363 CRB

Action Filed: June 26, 2007

DECLARATION OF G. STEVEN
FENDER IN SUPPORT OF
GABANA'S OPPOSITION TO
ROOTS READY MADE GARMENTS'
MOTION TO CONSOLIDATE

Date: August 24, 2007
Time: 10:00 a.m.
Place: Courtroom 8, 19th Floor
Judge: Hon. Charles R. Breyer

Trial Date: December 3, 2007

1 I, G. STEVEN FENDER, declare as follows:

2 1. I am a member of The Florida Bar. I am admitted to appear *pro hac vice* in
3 the State of California in this action and I am a shareholder in the law firm Litchford &
4 Christopher Professional Association, counsel of record for Plaintiff Gabana Gulf
5 Distribution, Ltd. and Gabana Distribution, Ltd. (collectively, "Gabana"). Except as
6 otherwise stated, the representations made in this declaration are based on my personal
7 knowledge and, if called upon to do so, I could and would testify competently to them.

8 2. This declaration is submitted in support of Gabana Gulf's Opposition to the
9 Motion to Consolidate brought by Roots Ready Made Garments Co., W.L.L.

10 3. Written discovery in this case commenced when Gabana Gulf served its first
11 request for production to the Defendants (collectively, "Gap"), on July 28, 2006.

12 4. To date, the parties have engaged in the following discovery: (1) a two-day
13 deposition of Gabana Gulf pursuant to Federal Rule of Civil Procedure 30(b)(6) (which
14 required Gabana's principal to travel from Geneva, Switzerland to San Francisco,
15 California); (2) full day depositions of key Gap witnesses Ron Young (current Gap
16 employee) and Jon Ehlen (former Gap employee); (3) document productions have been
17 exchanged from at least two different sets propounded by each party; (4) multiple rounds
18 of interrogatories have been served, and answers exchanged; (5) three discovery motions
19 have been filed, one was ruled upon, the other two are pending further actions by the
20 parties as ordered by the Court; and (6) potential experts have been retained, as disclosed
21 between the parties under the Protective Order.

22 5. Several months ago, and prior to Roots filing its lawsuit, Gabana Gulf and
23 Gap agreed that fact discovery would close on August 15, 2007. Gap and Gabana Gulf
24 have agreed to conduct limited discovery between then and early September, and
25 stipulated to moving related deadlines for the filing of dispositive motions and expert
26 disclosures and discovery to September as well.

1 6. The representation in Roots' motion to consolidate that Gabana Gulf did not
2 oppose consolidation provided that the trial date is unaffected is a misunderstanding. I
3 have made an investigation as to the source of that statement of consent. I conferred with
4 co-counsel and law partner, Hal Litchford. I learned that Keith Rounsaville of our office
5 has had some conversations about the cases with counsel for Roots and that the subject of
6 consolidation was raised and discussed conceptually. My understanding is that
7 Mr. Rounsaville was never specifically asked to articulate a formal position on behalf of
8 our clients to a motion to consolidate. More fundamentally, counsel for Gabana Gulf did
9 not have their client's authority to take any final position with respect to consolidation
10 before Roots filed its motion. The position set forth in Gabana Gulf's opposition is what
11 Gabana Gulf ultimately authorized and approved .

12 7. I am declaring as to the contents of Paragraph 5 of this declaration because
13 Mr. Rounsaville is out of the office in British Columbia this week.

14 8. I have been the lead attorney for Gabana with respect to discovery. None of
15 Gabana's written discovery requests have been calculated to discover what, if any, oral
16 representations Gap made to Roots, or whether Gap entered into the franchise agreement
17 with Gabana for the purpose of benefiting Roots.

18 9. The depositions of Francois Larsen, John Ehlen, and Ron Young have
19 already been taken in the Gabana-Gap litigation.

20 10. Counsel for Roots has asked to see documents produced in the Gabana-Gap
21 litigation, but Gabana has not produced any such documents to date; I am informed and
22 believe that Gap has not done so yet either.

23 11. Gap has taken the position that Gabana must indemnify Gap for Roots'
24 claims against Gap.

25 12. Scheduling the international depositions of four to five witnesses, several of
26 which neither Gabana nor Gap controls, has been exceedingly challenging.
27

By: /s/
G. STEVEN FENDER

DECL. OF G. STEVEN FENDER ISO OF OPP. TO THE MOT. TO CONSOLIDATE

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